IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Revision Application No.337 of l998

Subhash Shakaarrao Gaikwad ..Applicant
vs
Babu Barku Kolpe & Ors..Respondents

Ms Smita Mane for P B Shah for applicant

CORAM: B.H.MARLAPALLE J
Dated 23.8.2005

ORAL JUDGMENT:

l. This civil revision application filed under Section ll5 of the Code of Civil Procedure assails the order passed by the learned Civil Judge, J.D.at Daund below Exh l-33 in RCS No.l98 of l997 on ll.ll.l997. The applicant is the defendant no l in the same suit and had filed an application at Exh 33 under Section 9A of the C.P.C. raising objection to the jurisdictioni of the trial court to entertain the suit. The plaintiff filed his reply at Exh 39 to the said application and submitted that the court had jurisdiction to entertain and try the suit. The trial court thereafter framed the issue "Whether this court has no jurisdiction to try this suit" and answered in the negative i.e. against the defendant and thus

application at Exh 33 came to be rejected.

2. The RCS No.l98 of l997 came to be filed for declaration and permanent injunction. The suit land is described in the plaint and admeasures l Hectare and 8l Ares located in Gat No.893 of village Patas, Taluka Daund in Pune District and it was a joint property of three brothers. The defendant no.2 had sold the suit land to the defendant no 3 on 23.9.l987 for an amount of Rs.l.50 lacs and the said sale deed was registered. The plaintiff had claimed l/3rd share in the said land and had prayed for a declaration that the sale deed registered on 23.9.l997 in respect of the suit property be declared as null and void in respect of his share. The defendant no.l who is the present applicant had, therefore contended in his application at Exh 33 that l/3rd share of the plaintiff would at the highest be valued at Rs.50,000 i.e. l/3rd of Rs.l.50 lacs and, therefore the trial court did not have pecuniary jurisdiction to entertain the suit. The learned judge of the trial court in the impugned order has held that the averments made by the plaintiff that

he was not seeking partition or was claiming recovery of money but only praying for a declaration that the document i.e. sale deed be declared as not binding on him, are required to be accepted to hold that the jurisdiction of the trial court was not ousted. A perusal of the impugned order thus goes to show that the learned judge has not set out any reasoning as to why the issue of pecuniary jurisdiction was required to be answered against the defendants. Even as per the averments made by the plaintiff himself if the prayer for declaration is allowed in respect of his share of the suit land, the sale deed under challenge would be valid only for the remaining 2/3rd share of the land and for a consideration of Rs.l lac only. The consideration of Rs.50,000 would stand reduced from the sale deed if the prayer of the plaintiff for declaration is allowed by the trial court and thus the defendants are justified in raising the issue of pecuniary jurisdiction. There is no dispute that if the suit property is valued at Rs.50,000/- the court of Civil Judge J D would not have pecuniary jurisdiction to entertain the suit. The trial court fell in manifest error in not

appreciating the effect on the declaration sought by the plaintiff in respect of the sale deed and to the extent of his claimed share of l/3rd in the suit land. The impugned order is indefensible and the challenge to the same must succeed.

3. In the result this civil revision application is allowed and the impugned order dated ll.ll.l997 below Exh 33 is quashed and set aside. The said application stands allowed and it is held that the court of Civil Judge J D will not have pecuniary jurisdiction to entertain and try RCS No. l98 of l997. The learned District Judge, Pune/ Amravati is directed to assign the said suit to the court of Civil Judge, S.D. at Daund,if any, or at other places having territorial jurisdiction. Writ to go forthwith to the court below.